

TITLE 65
SOLDIERS AND SAILORS
CHAPTER 5
RIGHTS AND PRIVILEGES OF VETERANS

65-501. STATEMENT OF PURPOSE. It is the intent of the legislature to honor veterans of the armed forces by providing preference in initial appointments to public sector jobs in Idaho. Veteran's preference is intended to honor those citizens who have served their country in active duty by providing veterans a more favorable competitive position for government employment and acknowledging the larger sacrifice of disabled veterans. Eligible veterans are provided advantages in public employment in Idaho, including preference for initial employment and retention in the event of layoffs. Veteran's preference requires public employers to provide additional consideration for eligible veterans, but it does not guarantee the veteran a job.

65-502. DEFINITIONS. As used in this chapter:

(1) "*Armed forces*" means the Army, Navy, Marine Corps, Coast Guard, Air Force, and the Reserve components thereof.

(2) "*Disabled veteran*" means those honorably separated veterans who:

(a) Qualify as disabled veterans because they have served on active duty in the armed forces and have a current service-connected disability of ten percent (10%) or more or are receiving compensation related to a service-connected disability including retirement benefits or pension from the military or the department of veterans affairs; or

(b) Are Purple Heart recipients.

(3) "*Honorable conditions*" means an honorable discharge or a general discharge "under honorable conditions."

(4) "*Initial appointment*" means the first time a qualified veteran is hired by a county or a municipal government or the state, provided however, subsequent separation from the county, municipal government or the state shall not result in the award of new preference or preference points with that governmental entity. "Initial appointment" shall not include:

(a) Jobs held by patients, inmates or students in or enrolled at a state institution;

(b) Temporary or casual employment; or

(c) An office filled by election.

(5) "*Key employee*" means an individual specifically hired for an "at will" or nonclassified position for which there is no selection process, such as a position as a

private secretary or deputy of an official or department who holds a confidential relationship to the appointing or employing officer.

(6) "*Military duty*" means training and service performed by an inductee, enlistee or reservist or any entrant into a component of the armed forces of the United States, provided "military duty" shall not include active duty training as a reservist in the armed forces of the United States or as a member of the national guard of the United States where the call is for training only.

(7) "*Position*" means a job held by a public employee but shall not include:

- (a) A job held by a patient, inmate or student in or enrolled at a state institution;
- (b) Temporary or casual employment; or
- (c) An office filled by election.

(8) "*Public employee*" means any person holding a position in public employment.

(9) "Public employer" means any government, department or agency mentioned in subsection (10) of this section employing a public employee in a position.

(10) "*Public employment*" means employment of the government of this state, or of any county, municipality or other political subdivision of the state, including any department or agency thereof.

(11) "*Register*" means a list of names of persons who have been determined to be eligible for employment in a classified position as determined on the basis of examination and merit factors as established in a civil service system.

(12) "*Service-connected disability*" means that the veteran is disabled due to injury or illness that was incurred in or aggravated by military service as certified by the federal veterans administration or an agency of the department of defense.

(13) "*Temporary or casual employment*" means employment for a brief, nonrecurrent period where there is no reasonable expectation that such employment will continue indefinitely or for a significant period of time.

(14) "*Veteran*" means any person who has:

(a) Served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955;

(b) Served on active duty as defined in 38 U.S.C. section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under 10 U.S.C. section 12103(d) pursuant to an enlistment in the army national guard or the air national guard or as a reserve for service in the army reserve, naval reserve, air force reserve, marine corps reserve or coast guard reserve;

(c) Served on active duty as defined in 38 U.S.C. section 101(21) in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992; or

(d) Served as may be further defined in 38 U.S.C. section 101(11).

65-503. PREFERENCE TO BE GIVEN QUALIFIED VETERANS, SPOUSES, WIDOWS AND WIDOWERS BY PUBLIC EMPLOYERS. (1) Eligibility for preference.

(a) Veterans and disabled veterans as defined in section 56-502 [65-502], Idaho Code;

(b) A widow or widower of any veteran as long as he or she remains unmarried;

(c) The wife or husband of a service-connected disabled veteran if the veteran cannot qualify for any public employment because of a service-connected disability.

(2) Employer obligations.

(a) Public employers must give notice in all announcements and advertisements of vacancies that preference in appointment will be given to eligible veterans, and application forms must inquire whether the applicant is claiming veteran's preference and whether the applicant has previously claimed such a preference. An applicant claiming preference is responsible for providing required documentation at the time of making application. The employer must inform applicants of the requirements for documentation.

(b) In all public employment, excluding key employee positions, the hiring official shall give preference to the employment of veterans.

(c) An application for appointment to a public employment position will be accepted after the closing date of the examination from a person who was serving in the armed forces, or undergoing service-connected hospitalization up to one (1) year following discharge. The application must be submitted within one hundred twenty (120) days of his or her separation from the armed forces or hospitalization and prior to the expiration of any register established as a result of the examination.

(d) A disabled veteran may file an application at any time up until a selection has been made for any position for which a register is then maintained as a source for future job openings, or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. If a register is not used as part of the selection process, a disabled veteran may file an application after the closing date, but such application will only be considered if a selection has not been made and the selection process is still active.

(e) An appointing authority may refuse to accept an application from an otherwise qualified veteran who is deemed unqualified through his or her actions. Examples of such actions include dismissal for cause from a public entity, a felony conviction, or conduct unbecoming a public employee. Such refusal must be supported by good cause and is appealable pursuant to section 65-506, Idaho Code.

65-504. BASIC PREFERENCE AND ADDITION OF POINTS TO COMPETITIVE EXAMINATION RATINGS. (1) An individual who qualifies for a veteran's employment preference is entitled to a preference in initial appointment with a public employer over other applicants for the same position who are not more qualified.

(2) Five (5) percentage points shall be added to the earned rating of any veteran and the widow or widower of any veteran as long as he or she remains unmarried, when required to take competitive examination for any position in any state department, county or municipal government, which may now or which may hereafter require competitive examination under merit system or civil service plan of selecting employees: The names of all five (5) point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating. The additional points added by reason of veteran's preference shall be used only for the purpose of initial appointment and not for the purpose of any promotion, transfer or reassignment.

(3) Ten (10) percentage points shall be added to the earned rating of veterans discharged under honorable conditions who qualify as disabled veterans because they have served on active duty in the armed forces at any time and have a current service-connected disability of ten percent (10%) or more. Alternatively, ten (10) percentage points shall be added to the earned rating of the widow or widower of any disabled veteran as long as he or she remains unmarried or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. The names of all ten (10) point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating. The additional points added by reason of veteran's preference shall be used only for the purpose of initial appointment and not for the purpose of any promotion, transfer or reassignment.

(4) Veterans discharged under honorable conditions who served on active duty in the armed forces at any time and have a current service-connected disability of thirty percent (30%) or more shall be offered an interview if they are one (1) of the top ten (10) qualified applicants. If applicants are not ranked, an interview must be offered to such veterans who fully meet all qualifications for the position. Notwithstanding this

subsection, employers shall not be required to interview more than a total of ten (10) applicants regardless of the number of such qualified veteran applicants.

65-505. OFFICIALS TO OBSERVE PREFERENCE -- EXCEPTIONS. All elective officers, department heads, boards, commissions and/or other public officials of all state, county or municipal governments and departments and all political subdivisions thereof, who may be authorized to select or hire employees, are hereby required to strictly observe this preference for veterans and disabled veterans when implementing a reduction in force, filling vacancies or selecting new employees, provided that this chapter shall not apply to key employee positions. This preference shall be granted without regard to political affiliation or endorsements to veterans and disabled veterans who are qualified for the position or positions to be filled. In the event of an emergency which may endanger the health, safety, and public welfare, the provisions of this chapter may be dispensed with temporarily, but in no event shall persons who were employed to meet such emergencies be permitted to work for a period of time exceeding ninety (90) days, except such employees who meet all the requirements provided for in the chapter.

65-506. FAILING OR REFUSING TO GIVE PREFERENCE -- CIVIL LIABILITY. (1) Individuals who believe they have been denied a right or benefit under this chapter may file an appeal with the governing body of such jurisdiction or unit of government within thirty-five (35) days of the alleged denial of preference. If an appeal process does not exist for that jurisdiction or unit of government, the complainant may file directly in district court.

(2) The division of veteran's services is authorized and directed to issue rules for the enforcement of this chapter. Such rules shall include, but are not limited to, procedures public employers may implement for an internal process which must be exhausted prior to gaining access to the courts.

(3) Any public employer who deliberately or willfully refuses or fails to give preference to qualified veterans required by the provisions of this chapter shall be subject to writs of mandate pursuant to sections 7-301 through 7-314, Idaho Code, and if found in violation of any such provisions shall be required to pay the costs of suit and reasonable attorney's fees incurred in such action, and may further be required to employ or reemploy the veteran, and shall be required to pay as damages such amount as the court may award, but in no event shall the amount of such damages and costs of suit exceed the sum of five thousand dollars (\$5,000) or ten percent (10%) of the annual salary of the position, whichever is higher. Such action must be commenced not more than one hundred eighty (180) days from the alleged denial of preference, provided

however, applicants for classified state employment remain subject to the procedures set forth in section 67-5316, Idaho Code. If an appeal process is in place pursuant to subsection (1) of this section, the one hundred eighty (180) days will not begin until that process has been exhausted.

65-507. APPLICATION OF CHAPTER LIMITED. This chapter shall not apply to work performed where federal funds are contributed, if in conflict with federal laws or regulations which restrict employment eligibility to specific individuals or groups.

65-508. REEMPLOYMENT AND LEAVE OF ABSENCE. All public employers shall comply with the reemployment, leave of absence, and other provisions of the uniformed services employment and reemployment rights act, 38 U.S.C. section 4301, et seq.

65-509. MALES OF OR OVER EIGHTEEN YEARS OF AGE EMPOWERED TO CONTRACT UNDER G.I. BILL OF RIGHTS. Males of the age of eighteen (18) years and over are expressly authorized to incur obligations and enter into necessary contracts to comply with the requirements of the federal "G.I. Bill of Rights" (being the act of June 22, 1944 (58 Stat. 291, 38 U.S.C.A. 694) and acts amendatory thereof or supplemental thereto). A minor can not disaffirm such contract if otherwise valid.

65-510. RELATION TO OTHER LAWS. Any laws or parts of laws, which are inconsistent with the provisions of this chapter, or which would serve to defeat the purposes thereof, shall to such extent be deemed inapplicable to public employers and public employees in the exercise of the rights and privileges conferred by this chapter.

65-511. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.